IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

CRL.A.No. 442 of 2004(C)

SC.87/1998 of ADDL. SESSIONS COURT (FAST TRACK COURT) I, TRIVANDRUM
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APPELLANT:

ABDUL KARIM, S/O. MYTHEEN KANNU,
CONVICT NO.7743, CENTRAL PRISON,
THIRUVANANTHAPURAM 695 012.

BY ADV. ADV.SUNNY XAVIER(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA, REP.BY A PUBLIC
PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN,JJ.

Crl.Appeal No.442 OF 2004

Dated 16th January, 2007

JUDGMENT

Koshy,J.

Appellant was convicted and sentenced to under go imprisonment for life and to pay a fine of Rs.25,000/= for an offence punishable under section 302 of the Indian Penal Code for causing death of one Shareefa Beevi. Shareefa Beevi was the wife of PW15. About 20 years before the incident, her marriage was broken down and she started residing separately. The accused was brought and brought up by one Jalal, uncle of deceased Shareefa Beevi and he resided in the family house of the deceased. It is the allegation of the prosecution that he had some sexual relationship with the deceased. Later, the accused married the daughter of the aforesaid Jalal and resided near the house of the deceased Shareefa Beevi. The accused was doing business of fish vending and the deceased was doing the business of sale of vegetables. While so, deceased Shareefa Beevi extracted money from the accused stating about her prior sexual relationship with him and the accused therefore resided at a place called Kurakode in a rented house. Even then, at the market, she used to demand money. In view of that motive, the accused on 28.02.1997 at about 5.45 a.m. waited in the pathway on the way of deceased Shareefa Beevi to Chalai Market and when she reached the pathway leading to Nedumangadu market from International

market, the accused with the intention of causing death caught hold the tuft of her hair and caused her to lean and then cut her with MO1 dangerous knife 3-4 times on her neck, thereby fatal and severe injuries were sustained on the left side of her neck, left shoulder, back of neck and left cheek and deceased Shareefa Beevi fell down. Then the accused stood on her right thigh and asked her whether she did not die and when found that she did not die, chopped her wound on her neck resulting her instantaneous death at the spot itself and thereby committed an offence punishable under section 302 IPC. Without any delay, her son (PW1) gave information to the police station and Ext.P1 F.I. Statement was given before PW17, the then Sub Inspector of police. While PW17 was recording the F.I.Statement of PW1, the accused approached PW14, who was doing centry duty in the Police Station, with MO1 knife in his hand and PW14 informed the matter to PW17, thereby the knife was received and it was handed over to PW17 Sub Inspector. PW14 deposed that on 28.2.1997 he was on centry duty in the Nedumangadu Police Station and while so, at about 6.30 a.m. the accused approached him with a knife in his hand stating that he murdered a lady and he informed the matter to PW13 who was in G.D. charge. Evidence of PW17 shows that on 28.2.1997 at 6.15 a.m. he was recording Ext.P1 F.I. Statement of PW1

and while so, at about 6.30 a.m., the accused reached before PW14 with a knife in his hand after wrapping the same in a paper, thereby the matter was informed to PW13 and they brought the accused before him. He questioned the accused and recorded his statement. Then the matter was informed to the Circle Inspector and thereafter arrested him. The evidence of PW17 would also show that blood was found on the shirt and dhothi worn by the accused and on questioning him, he stated that blood was sustained in his shirt and dhothi while committing the offence and, therefore, he seized the same under Ext.P7 seizure mahazar. Evidence of Pws13, 14 and 17 clearly prove that accused wearing blood stained dress appeared in Nedumangadu Police Station with MO1 knife immediately after the incident. PW13 was holding G.D. Charge in the police station. It is true that the confession statement before the police officer is not admissible in evidence in view of Sections 25 & 26 of the Evidence Act. The accused came to the police station with the blood stained knife wearing blood stained dress. The above conduct and what is seen by the police officers are admissible in evidence in view of Section 8 of the Evidence Act. MO1 knife, MO1(a) paper using which MO1 is wrapped and MOs 3 and 5 shirt and dhothi worn by the accused at the time of occurrence were

forwarded to the Forensic Science Laboratory, Thiruvananthapuram for examination and Ext.P9 is the report obtained from the Director, FSL, Thiruvananthapuram. Ext.P9 shows that MO1 contained human blood even though it is insufficient to determine the group. It also shows that MO1(a), MO4 and MO5 contained human blood belonging to `B' group. PWs 8 and 9 are attestors of seizure mahazar of MO1, MO4 and MO5. They supported the prosecution case.

2. PWs 2 and 3 are eye witnesses. According to PW2, deceased Shareefa Beevi was residing adjacent to her house. She was doing the business of sale of plastic cover and paper, whereas the deceased Shareefa Beevi was doing the business of sale of vegetables. On the date of occurrence, herself, deceased Shareefa Beevi and PW3 together were coming to the Nedumangadu market through the drain of the International market for the purpose of going to Chalai market and, at that time, the accused reached ahead of them and caught hold of the tuft of the hair of deceased Shareefa Beevi, caused her to lean and cut her 4-5 times on her neck with a knife used for cutting fishes, thereby Shareefa Beevi fell down by her face downwards. Then the accused after sitting on her thigh asked her whether she did not die and then chopped her neck. Then

PW2 informed the matter to PW1, the son of Shareefa Beevi, who was found present in the market. According to her, the accused ran towards Kurakode after the incident. PW3 fully supported the version of PW2. Version of PWs 13, 14 and 17 was corroborated with version of eye witnesses. Similarly, the version given by PWs 13, 14 and 17 regarding the surrender of MO1 knife etc. was also not seriously disputed. PWs 5 and 6 mahazar witnesses also support the above version.

3. Ext.P3 postmortem certificate shows that there were four incised wounds which are as follows:

1. Incised wound 10.5 x 2.5 x 5.5 cm obliquely placed on the back of head and neck, its right lower end 6 cm behind and 4 cm below the ear and the left upper end 2.5 cm behind the lower end of ear. The muscles on the back of head, the tissues connecting the under surface of head to first cervical vertebra, and the upper part of spinal cord (1x0.4x0.3cm) were seen cleanly cut.

2. Incised wound 20x6x5.5cm obliquely placed on the left side of neck, with a side cut 1.5x1.5 cm in the middle of upper margin. Its back upper end 2cm behind and 2 cm below the left mastoid process. The wound terminated at the level of the inter vertebral disc of 6^{th} and 7^{th} cervical vertebrae after cutting the muscles, vessels, nerves and soft tissues on the left side.

Trachea showed an incised wound 1.5 x 1.3 cm involving its whole thickness on front wall. Inner aspect of right sterno mastoid sternohyoid, sterno thyroid and lower third of thyroid gland showed a clean cut. It was directed downwards and to the right.

Brain showed bilateral subarachnoid haemorrhages. The sulci of brain narrowed and gyri flattered.

3. Incised wound 7.5 x 1.5 x 1.5 cm vertical on the left side of neck, its lower end 3.5 cm outer to and 2 cm below the left sterno-clavicular joint. A flap of collar bone 1.5x0.5x1.5 cm was found cleanly cut and reflected to right 3.5 cm outer to the sterno clavicular joint.

   The side cut of injury No.(2) and injury No.(3) were in the same vertical line.

4. Incised wound 5x1x4 cm through and through horizontal involving the left upper lip its inner end 1.5 cm outer to midline. The bone underneath was cleanly cut with fracture fragmentation around."

PW5 doctor who conducted postmortem and issued Ext.P3 certificate deposed that injury Nos.1 to 4 could be caused by MO1 and injury Nos.1 and 2 are independently sufficient in the ordinary course of nature to cause death. She further stated that injury No.2 could be caused by chopping after cutting and injury No.4 could be caused during cutting when the tip touches that portion of the body. So,

the medical evidence also supports the evidence of eye witnesses.

4. In 313 statement, apart from a complete denial, there was no separate defence taken up by the accused. Two contentions were raised by the accused, mainly that there was no motive for committing the crime. It is true that early sexual relationship as alleged by the prosecution was not proved by clear evidence, but, it was proved by PWs 3 and 7 that amounts were due from the deceased and deceased used to demand the same. When there is clear ocular evidence, motive is not so important as in a case based on circumstantial evidence (See **Narayan Nathu Naik** v. **The State of Maharashtra** (AIR 1971 SC 1656). Apart from the above, mind set-up of persons will be different and whether a particular incident is sufficient motive or not depends upon person to person. The second contention is that PWs2 and 3 are relatives or friends. It is settled law that mere relationship or friendship is not a ground for discarding the evidence and, normally, a relative or a friend will not implicate a person who is innocent so as to allow the real accused to escape. PW2 and PW3 are natural witnesses. Apart from the above, there is no case for the accused that PWs 2 and 3 are inimical

towards him for giving false evidence against him. There is nothing to disbelieve the evidence of PW2 and PW3. Further, other evidence including medical evidence corroborate the evidence of PWs 2 and 3. Therefore, we are of the opinion that the offence alleged against the appellant was clearly proved and the trial court has considered the entire evidence and came to the right conclusion. Hence, we see no ground to interfere with the conviction and sentence passed by the trial court.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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